

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE DE JESUS CONTRERAS,

Defendant - Appellant.

No. 03-17234

D.C. Nos. CV-02-00385-RCC
CR-97-00564-RCC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted December 5, 2005 ^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Jose De Jesus Contreras appeals the district court's denial of his 28 U.S.C.
§ 2255 motion challenging the sentence imposed following his conviction on two

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

counts of possession of methamphetamine with intent to distribute. We have jurisdiction pursuant to 28 U.S.C. § 2253.

Contreras contends that his Sixth Amendment rights were violated because: (1) his indictment failed to allege a specific quantity of drugs, and (2) the jury was not instructed to determine the amount of methamphetamine, resulting in a sentence based on facts neither charged in the indictment nor proven to a jury beyond a reasonable doubt. He contends that *Blakely v. Washington*, 542 U.S. 296 (2004), should be applied retroactively to cases on collateral review. Contreras' request for retroactive application of *Blakely* is foreclosed by *United States v. Cruz*, 423 F.3d 1119, 1120 (9th Cir. 2005) (per curiam) (holding that neither *Blakely* nor *United States v. Booker*, 125 S. Ct. 738 (2005), applies retroactively to cases on collateral review).

AFFIRMED.